

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000368

04/21/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

CHRISTINE DAVIS

v.

DAVID MICHAEL COMBS

TODD K COOLIDGE

MESA JUSTICE CT-EAST
REMAND DESK-LCA-CCC

MINUTE ENTRY

EAST MESA JUSTICE COURT

Cit. No. #1959848

Charge: A. DUI ALCOHOL, DRUGS, TOXIC VAPOR, OR COMBO
B. DUI WHILE .10 OR MORE

DOB: 01/29/79

DOC: 01/19/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since oral argument on March 28, 2003, and this Court has considered and reviewed the memoranda submitted by the parties and the record of the proceedings from the trial court.

Appellant was arrested and charged with: (1) Driving While Under the Influence, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); and (2) Driving With a Blood
Docket Code 512

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Alcohol Content of .10 or greater, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2). Appellant entered pleas of Not Guilty. Appellant's counsel filed a Motion to Suppress the results of the blood test based upon his contention that the phlebotomist who drew his blood was also a police officer, thereby rendering the blood draw inadmissible. Appellant contends that police officers are not qualified, and, secondly, that police officers as a class should be precluded from making blood draws. This court rejects those claims.

Appellant attempts to distinguish the facts of this case from those decided by the Arizona Court of Appeals in State of Arizona ex rel. Pennartz v. Olcavage.¹ However, this Court determines that that court's conclusions that the phlebotomist is "qualified" pursuant to A.R.S. Section 28-1388(A) in conducting a blood draw if they are "competent, by reason of training or experience in that procedure" control in this case.² This Court sees no distinction in the fact that the phlebotomist was a sworn peace officer in this case, but in Pennartz v. Olcavage, the phlebotomist was employed by the police. The issue, then, should not be the title or uniform of the person who draws the blood, but whether the person is competent to draw blood.

Evidence was presented to the trial judge that a qualified individual performed the blood draw in this case. It is particularly important to this court to note that the record discloses that there was no question but that the blood draw was performed properly by someone who knew what they were doing, who had experience, and that no physical harm was caused to Appellant during the blood draw. The only proper issue before the trial judge was the phlebotomist's qualifications. And, the trial judge determined that the phlebotomist was a qualified individual within the meaning of applicable law.³

This Court concludes that the trial judge did not err in denying Appellant's Motion to Suppress/Dismiss based upon Appellant's claim that a police officer could not perform a blood draw.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the trial court.

IT IS FURTHER ORDERED remanding this matter back to the East Mesa Justice Court for all further and future proceedings in this case.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ 200 Ariz. 582, 30 P.3d 649 (App.2001).

² Id. at 588, 30 P.3d at 655.

³ A.R.S. Section 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).